Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
	)	
Common Carrier Bureau Questions	)	DA 97-385

AMERITECH REPLY TO FURTHER COMMENTS

Ameritech submits this reply to the further comments filed in the above captioned proceeding with respect to the questions posed by the Common Carrier Bureau ("Bureau") regarding the customer proprietary network ("CPNI") provisions of §222 of the Telecommunications Act of 1996 ("Act"), as they relate to the requirements of §§272 and 274 of the Act.[1]

In issuing its regulations concerning CPNI, the Commission should not abandon logic or the public interest -- as some commenters would have it do -- in interpreting the provisions of the Act dealing with CPNI. In particular, the Commission should avoid adopting rules that assume that Congress intended to eviscerate the ability to joint market that it expressly

[1] Notice, DA 97-385 (released February 20, 1997) ("Notice").

granted or to hinder customers' convenience or restrict their control over their CPNI.

I. SECTION 272(g)(3) MUST LOGICALLY BE READ TO EXEMPT ALL ACTIVITIES REASONABLY RELATED TO JOINT MARKETING FROM THE NONDISCRIMINATION REQUIREMENTS OF SECTION 272(c).

Several commenters have taken the view that §272(g)(3) applies only to the bare marketing activity itself when it exempts §272(g) activity from the nondiscrimination requirements of §272(c). In particular, these commenters maintain that the use or disclosure of CPNI in connection with §272(g) activity is not exempt from those nondiscrimination requirements.[2] This strained interpretation, however, conflicts with the language of the statute itself and with the very existence of §272(g)(3).

If Congress' intent was as narrow as suggested by these commenters, §272(g)(3) would have been unnecessary. The fact that the marketing activities are permitted under §272(g)(1) and (2) and that paragraph (g)(1) contains its own "nondiscrimination" provision[3] is a clear indication by itself that the general nondiscrimination provisions of subsection (c) do not apply to the "bare" marketing activity.

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[2] See AT&T at 14, Cox at 7, MCI at 21, Sprint at 11-12, Telecommunications Resellers Associates at 13, WorldCom at 16.

[3] A BOC must permit "other entities offering the same or similar service to market or sell its telephone exchange services."

Rather, by specifically including paragraph (g)(3), Congress intended to clarify that all activity reasonably related to the joint marketing contemplated in subsection (g) is to be excluded from the nondiscrimination provisions of subsection (c).

The above-cited commenters' position that a BOC's "use or disclosure" of CPNI in connection with joint marketing activity is not exempt from subsection (c) because it is not "essential or necessary" to joint marketing is not only factually wrong but also makes no sense.[4] In fact, the essence of marketing is the use and development of information to try to determine the products and services customers might be interested in. It includes the use of market research, market segmentation, focus groups, surveys, and prior purchase information to that end. Even AT&T has admitted that the use of this information is a marketing function:

> Even before our restructuring announcement, we were working on improving our infrastructure to support a focus on discrete market segments. Our primary approach to this is through our database marketing capability. We now have a database with information about 75 million customers. We know their wants, needs, buying patterns, and preferences.[5] (Emphasis added.)

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[4] Using that flawed logic, if a BOC and its §272 affiliate created a joint brochure and jointly staffed a booth at a state fair to hand out copies of the brochure, these commenters would argue that the BOC would also have a nondiscriminatory obligation under subsection (c) to jointly develop a brochure and staff a booth with any other interexchange carrier ("IXC") that requested it -- because such a brochure and booth-presentation are not "essential or necessary" to the joint marketing process.

[5] Joseph Nacchio, AT&T Executive Vice President, Consumer and Small Business Division, speech delivered at Morgan Stanley Conference, February 13, 1996.

The commenters are really asking the Commission read the paragraph (g)(3) exemption as applying to sales activity only. Such a misreading of paragraph (g)(3) not only turns the provision on its head and makes it virtually meaningless but also flies in the face of the statutory language which includes both "joint marketing and sale of services."

The Commission should recognize that paragraph (g)(3) applies to all activities that are reasonably part of joint marketing activity -- including the use or disclosure of CPNI in connection with the joint marketing activity contemplated by subsection (g).

II. BOC USE OF CPNI TO MARKET THE SERVICES OF ITS SECTION 272 AFFILIATE DOES NOT CONSTITUTE THE "PROVISION" OF INFORMATION AS CONTEMPLATED BY SECTION 272(c).

As noted above, certain commenters have taken the extreme position that any BOC "use or disclosure" of CPNI in connection with joint marketing activity contemplated by §272(g) is still subject to the nondiscrimination requirements contained in subsection (c). Assuming, for argument's sake, that the exemption from nondiscrimination obligations contained in paragraph (g)(3) does not apply to CPNI (which is not true) and that CPNI is "information" covered by paragraph (c)(1), nonetheless, a BOC's own use of CPNI to market the services of its §272 affiliate does not

come within the embrace of paragraph (c)(1). That paragraph provides that a BOC

> may not discriminate between [its §272 affiliate] and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. . .

When the BOC uses CPNI to market the services of its affiliate but does not provide that CPNI to its affiliate, there is no "provision" of "information" to the affiliate. Contrary to the arguments of the above-cited commenting parties, paragraph (c)(1) does not apply to the "use" of CPNI. In using CPNI to market the services of its §272 affiliate, the BOC is, at most, providing a marketing "service." However, even under the most narrow reading of paragraph (g)(3), that "service" is very specifically exempted from the nondiscrimination obligations of paragraph (c)(1).

The State of California agrees that

> Under the scenario where BOC representatives use CPNI for marketing and do not reveal it to BOC affiliates, Section 272(g)(3) waives the requirement that the BOC make the service available to other carriers at the same terms, conditions, and rates. Thus a BOC may use CPNI in marketing its own service and an affiliate's service, and not offer the same service on the same terms and conditions to other carriers.[6]

MCI's argument that a carrier's own use of CPNI is nonetheless subject to §§201(b) and 202(a) is misplaced.[7] Those provisions pertain to

[6] State of California at 5-6.

[7] MCI at 12, 22.

the rendition of Title II common carrier service directly to the customer and not to ancillary activities like marketing. In order for a carrier's use or disclosure of CPNI in connection with marketing activities to be included within the scope of those sections, all of the carrier's marketing activities must also be included. Given MCI's logic, a carrier could not market its own services without also having to market the services of other competing carriers -- a result that, Ameritech suggests, was never intended by Congress.

III. "SOLICITATION OF CUSTOMER CONSENT" IS NEITHER A SERVICE NOR A TRANSACTION UNDER SECTION 272.

By way of clarification of its prior response to the Bureau's questions regarding solicitation of customer consent concerning CPNI, Ameritech would note that, when a BOC (or any carrier, for that matter) communicates with its customers concerning those customers' rights regarding CPNI and solicits customers' consent for the use or transfer of CPNI for particular purposes, there is no transaction with or service provided to an affiliate. Rather, the only "transaction" is between the BOC and its customers; and the only "service" -- if any -- is one provided directly to the customers in explaining to them their rights and seeking permission to provide them with information about new products and services.

In particular, if a BOC solicits customer consent to use CPNI to market the services of its §272 affiliate, it is likely that this will be done in connection with providing information about customers' CPNI rights and soliciting customer consent for the BOC to use CPNI to directly market other "out-of-category" products and services. There is no separate transaction with the affiliate in connection with this activity, nor is there a separate "service" being provided to that affiliate. Thus, neither paragraph (c)(1) nor paragraph (b)(5) applies to this activity.

Given this fact, the restrictions suggested by certain commenting parties -- particularly those restrictions that would actually preclude customers from authorizing that CPNI be transferred to a BOC's §272 affiliate[8] -- should be dismissed not only because they are inconsistent with the Act, but also because they are blatantly anti-consumer and contrary to the spirit of §222 concerning customers' control over the use of their CPNI.

IV. SECTION 274 CONTAINS NO GENERAL NONDISCRIMINATION PROVISION APPLICABLE TO THE USE OR DISCLOSURE OF CPNI.

Subparagraph 274(c)(2)(A) provides:

> A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher: *Provided*, That if such services are provided to a separated affiliate, electronic publishing joint venture,

[8] See AT&T at 12, Sprint at 8, TRA at 11, WorldCom at 10, Competitive Policy Institute at 8.

> or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms.

AT&T and Cox maintain that, if such inbound telemarketing or referral services are provided by a BOC to an affiliate, and if CPNI is used in that process, then the CPNI must be made available to nonaffiliates.[9] Such a position, however, contradicts the very specific statutory language quoted above. There is simply no statutory requirement related to the disclosure of CPNI. The only nondiscrimination requirement which Congress saw fit to include in that subparagraph is the requirement to make similar inbound telemarketing or referral services available to nonaffiliates on nondiscriminatory terms. While this latter requirement might impose upon the BOC an obligation to use CPNI to provide inbound telemarketing or referral services to nonaffiliates in a manner consistent with the way in which CPNI is used to provid those services to the §274 affiliate (consistent with customer consent), there is not even a hint that Congress intended that CPNI must be disclosed. The Commission should decline to impose such a requirement on its own.

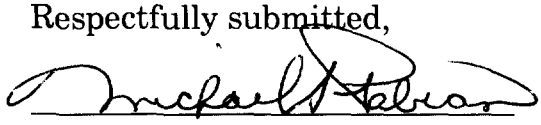
V. CONCLUSION.

The Commission should avoid implementing CPNI rules that gut the permission given by Congress for BOCs to market the services of their §272

[9] AT&T at 20-21, Cox at 11.

affiliates and to be free from nondiscrimination obligations in so doing. Similarly the Commission should avoid mischaracterizing BOC solicitation of customer consent as a service provided to an affiliate when the essence of the activity is the BOC's discussion, with its customers, of their rights and desires with respect to their CPNI. Finally, the Commission should not on its own impose a general CPNI nondiscrimination obligation on BOCs with respect to their §274 affiliates when Congress refused to do so.

Respectfully submitted,



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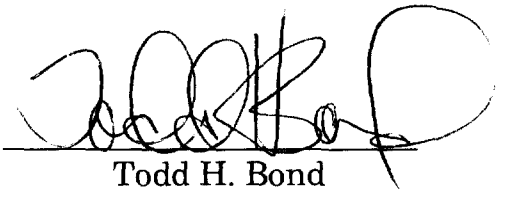
CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Ameritech Reply to Further Comments has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 27th day of March, 1997.

By: 
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